

Best Practices

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Open Up...Let the Sunshine in!

What you need to know about Ohio's open meetings and open records laws

How Sunshine Laws keep government open and accountable



Mary Taylor, CPA
Ohio Auditor of State



Mary Taylor, CPA

Ohio Auditor of State

Dear Colleague,

Government accountability and transparency is a long-established concept that has been at the foundation of American democracy from the very beginning. In 1789, Thomas Jefferson emphasized this when

he wrote, “We think, in America, that it is necessary to introduce the people into every department of government, as far as they are capable of exercising it, and that this is the only way to ensure a long-continued and honest administration of its powers.”

This edition of *Best Practices* highlights the Ohio Public Records Act and the Ohio Open Meetings Act, the significance of sunshine laws and the resources the Auditor of State’s office offers to promote government transparency and accountability in Ohio.

As our state’s chief taxpayer watchdog, I take my responsibilities to safeguard Ohioans’ right to access government records and public meetings very seriously. Ohio taxpayers place a great deal of trust in their elected officials, government agencies and community leaders to operate with integrity and to use public funds appropriately. In return, we all have an obligation to ensure that the government’s door is always open to the public.

The Ohio Auditor of State’s office has a number of valuable resources available to government officials, as well as the public at large, to help ensure openness and accountability in government. For more information about any of these services, please visit www.auditor.state.oh.us or call 800-282-0370.

I hope you find this edition of *Best Practices* to be interesting and informative. By taking advantage of the resources described here, you can do your part to uphold Jefferson’s ideal of “long-continued and honest administration” of government powers.

Sincerely,

A handwritten signature in blue ink that reads "Mary Taylor".

Mary Taylor, CPA
Ohio Auditor of State

Ohio's Sunshine Laws Help Keep Government Open, Accessible

By Steve Faulkner, *Public Affairs Staff Writer*

Sunshine Week got its start in – of all places – Florida, the Sunshine State. In fact, when the Florida state legislature attempted to exempt hundreds of documents from public scrutiny in 2002, a group of newspaper editors banded together to launch “Sunshine Sunday.”

According to the Florida Society of Newspaper Editors, the increased public scrutiny resulting from a series of Sunshine Sundays led to the defeat of more than 300 exemptions to public records laws in the legislative sessions that followed. This chain of events would later evolve into what is now recognized nationally as Sunshine Week.

Sunshine Week is an initiative developed to educate the public about the importance of open government and the dangers of excessive and unnecessary secrecy. Laws that govern citizens’ access to public meetings and public records are collectively known as sunshine laws.

According to Lucy Dalglish, executive director of the Reporters Committee for Freedom of the Press, sunshine laws provide citizens with access to information that can help them participate in the function of government.

“Sunshine laws allow the public to play an oversight role into how their tax dollars are spent,” Dalglish said. “You only get good government when people are getting good information to make informed decisions.”

The goal of Sunshine Week is to devote time and attention to government transparency. The American Society of Newspaper Editors now celebrates Sunshine Week each year during March. The event is scheduled to coincide with the birthday of James Madison – March 16. Madison was our fourth president and is considered the “father” of the United States Constitution. Organizers draw the connection to Madison since he was the author and champion of America’s

constitutional freedoms, most notably, freedom of the press.

Dalglish says the press is no more or less entitled to public information than the average citizen. Rather, the role of the press is to act as a conduit.

“We rely on a free press to independently gather information and tell a story,” Dalglish said.

In Ohio, the ability for reporters to tell their stories became a little easier beginning in the early 1950s. That is when state Representative A.G. Lancione introduced House Bill 440. Lancione’s legislation established Ohio’s first provisions governing the openness of the public meetings of councils, boards and commissions. He was also instrumental in the development of Ohio’s first public records laws, enacted in 1963.

The laws have been tweaked many times since the legislative days of Lancione, but their purpose remains the same: to improve the public’s access to the function of government. The last major overhaul of Ohio’s Sunshine Laws occurred in 2006 when the state legislature passed a bipartisan measure to improve openness and accountability. House Bill 9,

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Mary Taylor, CPA
Ohio Auditor of State

enacted in the 126th General Assembly, enhanced and clarified the duties and responsibilities of public officials regarding public records.

For example, Ohio law now requires elected officials, or their designees, to participate in three hours of public records training once during each term in office. The Ohio Auditor of State's office offers this training seminar free of charge.

Additional changes included in House Bill 9 require public officials to adopt and post a public records policy. A records retention schedule must also be made available and each public organization is required to appoint a public records officer.

Furthermore, in some cases, the new law includes a provision allowing for the reward of monetary damages if a public records request is improperly denied. Courts may award damages of as much as \$1,000 to those who are wrongfully denied public records requests. Public offices may also be required to pay court costs if they are found to be at fault for failing to properly respond to a public records request.

Cleveland-based attorney David Marburger represents the Ohio Coalition for Open Government. He has litigated thousands of public records and open meetings cases during his career. Marburger says democracies will fail unless government is transparent.

"Citizens have given public officials 100 percent of the authority they have and 100 percent of the funds they spend to carry out the function of government," Marburger said. "Government would not be deemed legitimate if the institutions the public paid for are not run honestly and fairly."

Alan Miller, managing editor of the *Columbus Dispatch*, a daily newspaper in central Ohio with a circulation of nearly 250,000, says every week should be Sunshine Week. He has spent 26 years as a reporter/editor and has covered everything from the smallest city council meetings to the largest public universities and state agencies. Miller says that, for years, Ohio was known as a public records state – meaning that Ohio

was once a role model for access to public records. But the inability of some local officials to properly interpret the state's sunshine laws slowly eroded access to public documents.

Miller notes that public officials are a constantly changing group and they need to know that these records are not their personal records, they belong to the public. He has advice on how local officials can become better stewards of public records, open meetings and overall transparency.

"It is critical that locally elected officials understand what the law says and have a spirit of openness when someone asks for records and access," Miller stated.



Get Your Free Copy of Ohio's Sunshine Laws Manual

To help local officials understand and interpret Ohio's Sunshine Laws, the Ohio Auditor of State's Open Government Unit, in conjunction with the Ohio Attorney General's office, produces "*Ohio Sunshine Laws: An Open Government Resource Manual*." The manual, otherwise known as the "Yellow Book," provides local officials and public employees and citizens with comprehensive information about Ohio's Sunshine Laws and includes any changes or additions as a result of newly enacted state law or legal precedent.

To obtain your free copy of "*Ohio Sunshine Laws: An Open Government Resource Manual*," please contact Teresa Goodridge in the Auditor of State's Open Government Unit by phone, 614-644-8986, by e-mail, tngoodridge@auditor.state.oh.us or download a copy from our Web site at www.auditor.state.oh.us.



Spotlight: Open Meetings - *Sunshine Laws Enlighten Us All*

By Emily Frazee, *Public Affairs Staff Writer*

Sunshine laws focus bright light into every corner of government. They enforce – by law – a principle best described by Supreme Court Justice Louis Brandeis nearly 100 years ago that “Sunshine is the best disinfectant.”

In Ohio, sunshine laws assure citizens of open access to public records. With few and well-defined exceptions, these laws also guarantee that government meetings are open to public scrutiny.

“Sunshine laws help citizens monitor the actions and decisions of government,” says Auditor of State Mary Taylor. “Public meetings provide one of the best ways for Ohioans to observe their government at work. Decisions must be made out in the open, where officials are accountable and their actions are transparent. This is what our sunshine laws enforce.”

Every public official has an obligation to be well informed of what sunshine laws require. Penalties for noncompliance can be severe, and lack of awareness is no excuse. Most importantly, democracy suffers when decision-makers meet behind closed doors, away from the disinfecting “sunshine” of public review.

To keep Ohio’s public officials – and the citizens they serve – up to date about open meeting requirements, Auditor of State Mary Taylor’s Open Government Unit (OGU) makes awareness and education about sunshine laws a primary goal.

Thousands of public meetings are held in Ohio each year. These include meetings of city councils, school boards and other high-profile government bodies. Additionally, open meeting laws cover a wide range of appointed advisory committees, commissions and other organizations whose volunteer members may not think of themselves as part of a “public body.”

Given the importance of complying with open meeting laws, a good understanding of the laws is essential for every public body. Awareness begins with one fundamental question: What is a public meeting? The answer, under

Ohio law, has three components, and each must be present to be considered a public meeting:

- the meeting must be prearranged
- a majority of the public body’s members must be present and
- public business must be discussed at the meeting

Any public body that holds a meeting in which all three of these points apply must provide proper public notice of that meeting. Notice means that the organization will provide information about the meeting in advance to local news media as well as to any individuals who have requested notification.

If the meeting is held on a regular basis (like a bi-weekly meeting of city council), officials must notify the public of the date, time and place of where those sessions will routinely occur. Also, if a public body decides to hold a special

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2009 Community School Training

August 14, 2009

The University of Akron
Student Union
303 Carroll Street
Akron, OH 44325-4601

August 18, 2009

Courtyard by Marriott
Springfield Downtown
100 South Fountain Avenue
Springfield, OH 45502

For a list of course descriptions and registration go to:
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meeting for a specific purpose, the public must be informed of the date, time, place and purpose of the meeting at least 24 hours in advance.

Robin McGuire Rose, an attorney and director of Auditor Taylor's Open Government Unit, also notes a public body may occasionally have the need for an emergency meeting.

"When an organization faces a crisis or some circumstance that requires urgent official action, a public body may need to meet immediately. Under Ohio law, public bodies are permitted to have emergency meetings, but they must first notify the public of the time, place and purpose," she says.

As the term implies, an open meeting must indeed be open to the public. Previous Ohio court cases have held that a meeting "open to the public" is one held in a place that is within the geographical jurisdiction of a public body. Not only should the location be appropriate, but officials must also ensure that doors to the meeting facility are

unlocked. The meeting place must be handicap accessible as required by federal law.

The law also requires that public bodies must take minutes of each meeting and keep those minutes on file, as open records. Minutes record not only votes and discussion, but must also state

To keep officials – and all Ohio citizens – up-to-date on open meeting requirements, Auditor of State Mary Taylor's Open Government Unit makes awareness and education about sunshine laws a primary goal

sufficient facts and information to permit the public to understand and appreciate the rationale behind the public body's decisions.

However, public officials should note that an open meeting can become "closed" if they move to hold an executive session. In an executive session, a public body is permitted to discuss certain matters privately if the topic falls under one or more of seven subject areas: personnel, purchase or sale of property, court action, collective bargaining, confidential matters under the law, security matters and county, municipal

or joint township hospital trade secrets.

OGU Director Rose notes that Ohio law requires a public body to follow a specific process in order to invoke an executive session exception. A member must move to go into executive session and a second on the motion should be recognized. There must be a majority roll call vote to adjourn into executive session.

One of the most common mistakes made in this regard occurs when the governing body does not publicly state (and record in the minutes) a reason for entering the executive session. The public body must state at least one of the seven eligible reasons for executive session prior to adjourning. It is also important to remember that executive session discussions, although private, must occur only during the course of an open meeting.

Rose's advice: "Learn this procedure and plan ahead. If an item on the agenda requires executive session, research this in advance, ask the advice of your legal counsel and use a form to remind you of each step to take to go into executive session."

There are severe penalties for not complying with the open meeting laws. A violation could result in an injunction, a \$500 civil forfeiture and court costs. The public body could also be responsible for

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OGU

**OPEN
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Certified Public Records Training

Register online at:

<http://www.auditor.state.oh.us/ConferenceInformation/HB9/>

attorney fees incurred by a party seeking an injunction.

In addition, any resolution, rule or formal action that may have been deliberated or voted on privately (unless properly fitting an executive session exception) will be declared invalid if a violation occurs. Even if the actual adoption of an official act has occurred in an open meeting, it can be declared invalid if any deliberation occurred in secret.

Any person has the right to file an action against a public body alleging a violation of the open meeting laws within two years of the alleged violation.

Ohio law also recognizes good faith efforts to comply with open meeting laws. For that reason, Rose says it is vital for public bodies to understand their obligations under the law.

“Education and planning is key to following the law,” she says. “Take the time to review the entire act, consult with your legal counsel and utilize available resources, including those from the Auditor of State’s office, to familiarize yourself with all legal requirements.”



Auditor Taylor’s Open Government Unit

If you have general questions about Ohio’s open meeting laws or would like to receive training on how to comply with those laws and improve your public meetings, contact Auditor of State Mary Taylor’s Open Government Unit at 800-282-0370.

Although the demand for instruction increased since the passage of House Bill 9 in 2007, the Ohio Auditor’s office has been an open government resource for some time. “Our office began its sunshine law education efforts in 2004, and since that time the additional accountability and transparency resulting from open government training continues to be an important part of what we do,” said Ohio Auditor of State Mary Taylor.

The OGU serves as a trusted resource for everyone seeking information and training with regard to public records and open meeting laws. To date, Taylor’s Open Government Unit has conducted 84 open government training sessions throughout the state. To schedule a certified public records training or a sunshine law training created for your organization’s specific needs, call 800-282-0370 or e-mail ogu@auditor.state.oh.us.

COMING LATER THIS YEAR: BEST PRACTICES ELECTRONIC EDITION

Help Us Update Our Distribution List

Best Practices, the Auditor of State’s quarterly newsletter, will soon introduce a new paperless, postage-free electronic edition, distributed to readers by e-mail.

Printed copies will be available if you wish to continue receiving the *Best Practices* paper edition in the mail.

As we make this change, we are rebuilding our distribution list to eliminate duplication and outdated addresses. If you have not already done so, please fill out and send the card found inside this issue or e-mail your contact information to: bestpractices@auditor.state.oh.us.

Questions? Contact the Auditor of State’s Public Affairs Division at 614-644-1111.

PLEASE NOTE THAT THE CHANGE WILL OCCUR LATER IN 2009



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